

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

NO. 1:12-cr-2084-SAB

v.

JOSE ALFREDO ARREDONDO,

Defendant.

**ORDER DIRECTING  
RESPONSE**

Before the Court is Defendant's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 in light of *Johnson v. United States*, 135 S.Ct. 2551 (2015) and the Government's Motion to Vacate, ECF No. 67.

**RULE 4 ANALYSIS**

Under 28 U.S.C. § 2255, a court may grant relief to a federal prisoner who moves to vacate, set aside or correct his or sentence on any of the following rounds: (1) that the sentence was imposed in violation of the Constitution or laws of the United States; (2) that the court was without jurisdiction to impose such sentence; (3) that the sentence was in excess of the maximum authorized by law; or (4) that the sentence is otherwise subject to collateral attack. 28 U.S.C. § 2255(a). A petitioner must allege specific facts that, if true, would entitle the petitioner to relief. *See United States v. Rodrigues*, 347 F.3d 818, 824 (9<sup>th</sup> Cir. 2003) (*citing United States v. McMullen*, 98 F.3d 1155, 1159 (9<sup>th</sup> Cir. 1996)).

According to Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Court ("Rule 4") the Court must promptly examine a

1 Section 2255 motion to determine whether summary dismissal is warranted. If the  
 2 movant's "allegations, viewed against the record, either fail to state a claim for  
 3 relief or are so palpably incredible or patently frivolous as to warrant summary  
 4 dismissal," dismissal is warranted. *See Marrow v. United States*, 772 F.2d 525,  
 5 526 (9<sup>th</sup> Cir. 1985); *see also United States v. Leonti*, 326 F.3d 1111, 1116 (9<sup>th</sup> Cir.  
 6 2003). However, if the Court does not dismiss pursuant to Rule 4(b), the Court  
 7 shall order the Government to "file an answer, motion, or other response within a  
 8 fixed time, or take other action the judge may order."

9       Here, because it does not plainly appear from the face of the motion that the  
 10 movant is not entitled to relief, it is appropriate to order the government to file a  
 11 response. In anticipation to the Court ordering service, the Government filed a  
 12 Motion to Vacate Hearing, ECF No. 67. The Government asks the Court to relieve  
 13 it of its duty to respond and instead hold the proceedings in abeyance to permit the  
 14 Ninth Circuit to rule on whether *Johnson* has any retroactive effect on the U.S.  
 15 Sentencing Guidelines.

16       The Court finds that the interest of justice will be met by requiring the  
 17 Government to respond to the merits of Defendant's motion. The Government is  
 18 granted leave to renew its request to stay the proceedings at the June 15, 2016  
 19 hearing.

20       Accordingly, **IT IS HEREBY ORDERED:**

21       1.       The Government's Motion to Vacate and Hold Petitioner's Motion in  
 22 Abeyance, ECF No. 67, is **DENIED**, with leave to renew.

23       2.       On or before **June 3, 2016**, the Government shall file its response to  
 24 Defendant's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. §  
 25 2255.

26       3.       On or before **June 10, 2016**, Defendant shall file his reply.

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1 The District Court Executive is hereby directed to enter this Order and  
2 furnish copies to counsel.

3 **DATED** this 26th day of May 2016.



7 Stanley A. Bastian

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9 Stanley A. Bastian  
10 United States District Judge  
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